

(iv) The State agency shall submit modifications to the plan to the Department for approval, prior to implementation. Expenditures made prior to approval by the Department may not be used in offsetting the liability.

(v) Each State agency which has all or part of a claim suspended under this provision shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(A) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(B) A detailed description of the actual activity; and

(C) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(vi) Any funds that the State agency's reports do not document as spent as specified in the investment plan may be withdrawn by the Department from the reduction in QC liability. Before the reduction is withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(vii) If the reduction in QC liability is withdrawn, the Department shall charge interest on the funds not spent according to the plan, in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13(a)(1) of the Food Stamp Act of 1977.

(viii) The Department's determination to withdraw a reduction in QC liability is not appealable within the Department.

[Amdt. 160, 45 FR 15912, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6311, Feb. 17, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984. Redesignated and amended at 52 FR 3410, Feb. 4, 1987; Amdt. 295, 52 FR 29659, Aug. 11, 1987; Amdt. 328, 56 FR 60052, Nov. 27, 1991; Amdt. 325, 57 FR 2828, Jan. 24, 1992; Amdt. 327, 57 FR 44486, Sept. 28, 1992; 57 FR 47163, Oct. 14, 1992; Amdt. 348, 59 FR 34561, July 6, 1994; ; Amdt. 366, 62 FR 29659, June 2, 1997; Amdt. 373, 64 FR 38297, July 16, 1999]

## PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.

276.1 Responsibilities and rights.

276.2 State agency liabilities.

276.3 Negligence or fraud.

276.4 Suspension/disallowance of administrative funds.

276.5 Injunctive relief.

276.6 Good cause.

276.7 Administrative review process.

AUTHORITY: 7 U.S.C. 2011-2036.

EDITORIAL NOTE: OMB control numbers relating to this part 276 are contained in §271.8.

### § 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FNS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FNS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or subpart C—Quality Control (QC) Reviews, of part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying

with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to determine in each instance of non-compliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FNS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FNS and shall be afforded an administrative review by a designee of the Secretary as provided in § 276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in § 276.7(j).

[54 FR 7016, Feb. 15, 1989]

#### § 276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents

lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with § 274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates made that are not in accordance with § 274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FNS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than \$300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of \$1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.

(ii) If a State agency elects to report and have liabilities based on an existing administrative level higher than the county or project area provided in paragraph (b)(4)(i) of this section, but lower than the Statewide level of mail issuance provided in paragraph (b)(4)(iii) of this section, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty-five hundredths (.35) percent per quarter of the dollar value of each reporting unit's quarterly mail issuance. State agencies shall not create new administrative units for the sole purpose of reporting mail issuance losses.

(iii) If a State agency elects to report and have liabilities based on a State level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty hundredths (.30) percent per quarter of the dollar value of each State agency's total quarterly mail issuance.

(iv) FNS reserves the right to make all determinations on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FNS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FNS. The liability assessment will be based on the revised reporting requirement for the next full fiscal quarter.

(v) For the purpose of this section, "mail issuance" means all original coupon issuances distributed through the mail. "Mail loss" means all replacements of mail issuances except for replacements of returned mail issuances.

(vi) The State agency's liability shall be computed using data from Form FNS-259, Food Stamp Mail Issuance Report, or alternative reporting document accepted in advance by FNS and the State agency, which is submitted for the quarter for the particular reporting unit agreed to by FNS and the State agency, as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii).

(5) State agencies shall be held strictly liable for the following overissuances:

(i) The value of overissued coupons issued as a result of a State agency's failure to comply with a directive issued by FNS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) The value of coupons overissued by the State agency as a result of a court order or settlement agreement of a court suit which was not reported to FNS in accordance with the provisions of § 272.4(e); and

(iii) The value of coupons overissued as a result of a State agency entering into an out-of-court settlement of a court suit, the terms of which violate Federal laws or regulations.

(6) Coupon shortages and losses shall be determined from the Form FNS-250, Food Coupon Accountability Report and its supporting documents and from the Form FNS-46, Issuance System Reconciliation Report. Losses of Federal moneys resulting from overissuances shall be determined from sources such as audits, Performance Reporting System Reviews, Federal reviews, investigations and explanatory reports prepared by the State agency.

(7) State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up

## Food and Nutrition Service, USDA

## § 276.4

procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

(c) *Cash Losses.* State agencies are liable to FNS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FNS in accordance with the provision of § 273.18(h). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) *State agency payment to FNS.* State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FNS shall offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

[54 FR 7016, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11259, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 388, 65 FR 64589, Oct. 30, 2000]

### § 276.3 Negligence or fraud.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FNS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FNS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FNS-approved State Plan of Operation without first obtaining FNS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FNS may use actual, documented amounts or amounts which have been determined through the use of statistically

valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FNS will base its determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FNS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS, within the time period specified, may result in offsets to the Letter of Credit in accordance with § 277.16(c).

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 356, 59 FR 29713, June 9, 1994]

### § 276.4 Suspension/disallowance of administrative funds.

(a) *General provisions.* (1) FNS shall make determinations of the efficiency and effectiveness of State agencies' administration of the Food Stamp Program in accordance with the provisions of § 275.25. When making such determinations, FNS shall use all information that is available relating to State agencies' administration of the Program. This information includes, but is not limited to, information received from Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and the public.

(2) FNS may determine a State agency's administration of the Program to be inefficient or ineffective if the State

agency fails to comply with the food stamp requirements established by the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation.

(3) If FNS determines that a State agency's administration of the Program is inefficient or ineffective, FNS may warn the State agency that a suspension and/or disallowance of administrative funds is being considered. After a State agency receives a warning, FNS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* A suspension of funds is an action by FNS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories of a State agency's budget for administration of the Food Stamp Program. Suspensions of funds shall remain in effect until FNS determines that a State agency has taken adequate corrective action to correct the problem causing the suspension, in which event the suspension will be rescinded, or until FNS decides to disallow the suspended funds. FNS shall suspend funds in accordance with § 277.16.

(c) *Disallowance.* (1) A disallowance of funds is an action by FNS in which reimbursement is denied for otherwise reimbursable administrative costs claimed by a State agency in one or more of the cost categories of a State agency's budget for Program administration.

(2) In accordance with § 277.16, FNS has the option of disallowing funds in another cost category, or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FNS may disallow funds after previously suspending such funds or may disallow funds immediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of part 277 and appendix A, FNS shall provide State agencies with written advance

notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FNS, FNS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in a corrective action plan, FNS may omit the advance notification and immediately issue a formal warning.

(1) *Advance notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the Program may warrant the suspension and/or disallowance of Federal funds, FNS shall advise the State agency in writing of the deficiency and shall provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action will vary according to the nature of the deficiency.

(2) *Formal warning.* FNS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FNS the deficiencies noted in an advance notification within the time specified in the advance notification. FNS may also issue a formal warning to a State agency without first issuing an advance notification if a State agency fails to comply with a corrective action plan.

(i) Formal warnings shall include the following information:

(A) Specific descriptions of the deficiencies, explaining how the State agency is out of compliance with Program requirements;

(B) A Statement as to whether Federal funds will be suspended, disallowed or both, if appropriate;

(C) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount if actual cost are unavailable; and

(D) A statement of FNS' willingness to assist State agencies in resolving the deficiencies.

(ii) A State agency shall have 30 days from receipt of a formal warning to submit evidence that it is in compliance or to submit a corrective action proposal, including the date the State agency will be in compliance.

## Food and Nutrition Service, USDA

## § 276.7

(iii) When the deficiency cannot be corrected within 30 days of receipt of a formal warning but the State agency submits an acceptable plan for correcting the deficiency, FNS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FNS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FNS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FNS shall notify State agencies in writing by certified mail or through personal service that administrative funds are being suspended or disallowed. Such action may occur when any of the following situations arise:

(1) A State agency fails to respond to the deficiencies cited in a formal warning within 30 days of receiving the warning;

(2) The response by a State agency to the deficiencies cited in a formal warning is unsatisfactory to FNS; or

(3) A State agency fails to meet the commitments it made in its corrective action proposal and a formal warning had been held in abeyance pending completion of that corrective action.

(f) *Appeals.* After FNS has taken action to disallow Federal funds the State agency may request an appeal in accordance with the procedures specified in § 276.7.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 266, 52 FR 3410, Feb. 4, 1987]

### § 276.5 Injunctive relief.

(a) *General.* If FNS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) *Requesting injunctive relief.* Prior to seeking injunctive relief to require compliance, FNS shall notify the State

agency of the determination of non-compliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

### § 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

### § 276.7 Administrative review process.

(a) *General.* (1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage,

## § 276.7

## 7 CFR Ch. II (1–1–03 Edition)

and issuance of coupons (§276.2), billings based on charges of negligence or fraud (§276.3), and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations, or the FNS-approved State Plan of Operations (§276.4).

(2) A State agency aggrieved by a claim shall have the option of requesting a hearing to present its position in addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, hearings of appeals of negligence claims and disallowances of Federal funds shall be before an Appeals Board and hearings of appeals of other claims shall be before a single hearing official. In any case, the people reviewing the claim shall be people who were not involved in the decision to file the claim.

(b) *Notice of claim.* FNS shall provide a notice by certified mail or personal service when asserting claims against State agencies.

(c) *Filing an appeal.* A State agency aggrieved by claims asserted against it may file written appeals with the Secretary, U.S. Department of Agriculture, c/o the Executive Secretary, State Food Stamp Appeals Board, Food and Nutrition Service, USDA, Washington, DC 20250, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the FNS claim to its appeal. Appeals must be filed with the Executive Secretary or postmarked within 10 days of the date of delivery of the notice of claim. If the State agency does not appeal within the prescribed 10-day period, the FNS decision on the claim shall be final. No extension shall be granted in the time allowed for filing an appeal.

(d) *Computation of time.* In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday.

(e) *Stay of administrative action.* With one exception, the filing of a timely appeal and request for administrative review shall automatically stay the action of FNS to collect the claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final determination has been issued. The exceptions to this provision are those claims that are asserted against State agencies due to State agency failure to comply with an order to reduce, suspend or cancel benefits in accordance with §271.7. In situations where a State agency does not reduce, suspend or cancel benefits as directed and FNS takes action to disallow administrative funds or bill the State agency, the disallowance and/or billing shall remain in effect during the review process. Should the Appeals Board uphold the State agency, all disallowed funds and/or funds collected as a result of the billing shall be restored to the State agency promptly.

(f) *Acknowledging an appeal.* Upon receipt of an appeal and request for administrative review, the Executive Secretary shall provide the State agency with a written acknowledgment of the appeal, including a statement of whether or not the appeal is timely and can be accepted. A copy of each acknowledgment shall be provided to FNS. The acknowledgment of a timely and acceptable appeal and request for administrative review shall also include a copy of Secretary's Memorandum No. 2003, Revised, "State Food Stamp Appeals Board," and the identity of the Appeals Board member(s) designated by the Secretary to review the claim.

(g) *Submitting additional information.* (1) State agencies shall have 30 days from their request for an appeal to submit five sets of the following information to the Executive Secretary of the Appeals Board:

(i) A clear, concise identification of the issue or issues in dispute;

(ii) The State agency's position with respect to the issue or issues in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue or issues in dispute;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue or issues in dispute;

(v) The relief sought by the State agency;

(vi) The identity of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(2) At the request of the Executive Secretary, FNS shall promptly submit five complete sets of all documents, correspondence and records compiled by FNS in support of its claim.

(3) The Executive Secretary shall provide each person hearing an appeal and FNS with a complete set of the State agency information when it is received. The Executive Secretary shall also provide each person hearing an appeal and the State agency with a complete set of the information supplied by FNS when it is received.

(h) *Scheduling and conducting hearings.* When a hearing is afforded, the Appeals Board or hearing official has up to 60 days from receipt of the State agency's information, outlined in paragraph (g) of this section, to schedule and conduct the hearing. The Executive Secretary shall advise the State agency of the time, date and location of the hearing at least 10 days in advance of the hearing. The State agency is solely responsible for ensuring the attendance of all State agency witnesses at the hearing.

(1) A hearing is an informal proceeding designed to permit the State agency an opportunity to present its position before a neutral third party. Because the final determination is subject to judicial review and trial *de novo*, the Appeals Board and hearing official shall not be bound by the rules of civil procedure applicable in the court or by the adjudicatory requirements of the Administrative Procedures Act.

(2) The Appeals Board Chairman, his designee or the hearing official is the

presiding officer at the hearing. The presiding officer shall have full authority to ensure a fair and impartial proceeding, avoid delays, maintain order and decorum, receive evidence, examine witnesses, and otherwise regulate the course of the hearing. The State agency may represent itself at the hearing or be represented by counsel.

(3) The Appeals Board or hearing official shall receive into evidence the oral testimony of State agency witnesses and any documents which are relevant and material. Neither the Department nor FNS is required to present witnesses at the hearing. However, the Department and FNS shall make staff available to provide any information or clarification requested by the Appeals Board or hearing official. Under no circumstances shall the Department or FNS introduce new evidence at the hearing. Departmental and FNS staff, as well as State agency witnesses, shall be subject to examination by the Appeals Board or hearing official. Departmental and FNS staff shall not be subject to cross-examination by State agency representative or counsel. Likewise, State agency witnesses shall not be subject to cross-examination by Departmental or FNS staff. Each side shall be permitted to make a closing statement to the Appeals Board or hearing official upon completion of the taking of evidence and testimony.

(4) FNS and the State agency shall have the opportunity to submit additional written information to the Appeals Board or hearing official within 10 days after the close of the hearing. No new factual material may be introduced except as it directly relates to evidence or testimony presented at the hearing. Five complete sets of such information must be filed with the Executive Secretary or postmarked prior to the expiration of the 10-day deadline for it to be considered.

(5) An official verbatim transcript of each hearing shall be kept on file in the Office of the Executive Secretary for public inspection. A copy shall be furnished to FNS and the State agency. Anyone wishing to purchase a copy may make arrangements to do so with the commercial reporting service involved.



(i) *Final determination.* (1) When a hearing is afforded, a final determination shall be made within 30 days of the hearing, and the final determination shall take effect 30 days after delivery of the notice of this final decision to the State agency. When a hearing is not held, a final determination shall be made within 30 days after receipt of the State agency's information. The final determination shall take effect 30 days after delivery of the notice of the final decision to the State agency.

(2) The Appeals Board or hearing official shall either uphold the claim, deny the claim, or adjust the claim downward in such amounts and for such reasons as the Appeals Board or hearing official shall determine and declare. The final determination is not subject to reconsideration.

(j) *Judicial review.* State agencies aggrieved by the final determination may obtain judicial review and trial *de novo* by filing a complaint against the United States within 30 days after the date of delivery of the final determination, requesting the court to set aside the final determination. The final determination shall remain in effect during the period the judicial review or any appeal therefrom is pending unless the court temporarily stays such administrative action after a showing that irreparable injury will occur absent a stay and that the State agency is likely to prevail on the merits of the case.

(k) *Extension of time.* (1) No extension of time shall be permitted a State agency in which to file an initial request for an administrative review. All other requests from the State agency or from FNS for the extension of any deadline contained in §276.7 of these regulations or imposed by the Appeals Board or hearing official shall be granted only for good cause shown and only when received by the Executive Secretary before the expiration of the particular deadline involved. All requests for an extension shall be in writing. Filing a request for an extension stops the running of the prescribed period of time. When a request for an extension is granted, the requester shall be notified in writing of the amount of additional time granted. When a request is denied for being untimely or

for cause, the requester shall be notified and the prescribed period of time shall resume from the date of denial.

(2) The Appeals Board or hearing official may grant itself such additional time as it may reasonably require to complete any of its assigned responsibilities. If the Appeals Board or hearing official does find it necessary to grant itself an extension of time, the Executive Secretary shall notify all parties in writing.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994]

## PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

### Sec.

277.1 General purpose and scope.

277.2 Definitions.

277.3 Budgets and budget revision procedures.

277.4 Funding.

277.5 Methods of payment.

277.6 Standards for financial management systems.

277.7 Cash depositories.

277.8 Bonding and insurance.

277.9 Administrative costs principles.

277.10 Program income.

277.11 Financial reporting requirements.

277.12 Retention and custody of records.

277.13 Property.

277.14 Procurement standards.

277.15 [Reserved]

277.16 Suspension, disallowance and program closeout.

277.17 Audit requirements.

277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

APPENDIX A TO PART 277—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

AUTHORITY: 7 U.S.C. 2011-2036.

SOURCE: Amdt. 188, 45 FR 85702, Dec. 30, 1980, unless otherwise noted.

EDITORIAL NOTE: OMB control numbers relating to this part 277 are contained in §271.8.

### §277.1 General purpose and scope.

(a) *Purpose.* This part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the